IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 11074 of 2007(R)

EP 183/2006 IN OS.1331/1984 of II ADDL.M.C.,TRIVANDRUM

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PETITIONER:

AYYAPPAN CHELLAPPAN , PUTHUVEL PUTHEN VEEDU, PAZHAYA ROAD, ULLOOR VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENT:

CHINNAN RAJAPPAN, PUTHUVEL PUTHEN VEEDU, PAZHAYA ROAD, ULLOOR VILLAGE, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 11074 of 2007 R

JUDGMENT

The petitioner is the judgment debtor in O.S. No.1331/84 on the file of the II Additional Munsiff's Court, Thiruvananthapuram. In execution of the decree, the court below, vide Exhibit P8 impugned order, ordered delivery of the portion of 'A' schedule property to the decree holder, after demolishing the structure constructed therein by the petitioner/judgment debtor, encroaching into that portion of the property of the decree holder and directed boundary being put up as per the decree. One Surveyor was also appointed to assist the Amin. The delivery was being so ordered over-ruling Exhibit P5 objection filed by the petitioner/judgment debtor.

2. Exhibit P5 objection shows that the contentions of the judgment debtor are to the

effect that actual possession of the entire 'A' and 'B' schedule properties are with him and not only a portion alleged to have been encroached upon; that the area now available is only 0.0100 hectares, which will be approximately 2.47 cents only, as found on re-survey and hence, the decree cannot be executed. The petitioner also wanted a separate demarcation being made in tune with the decree and plan in relation to the actual area available at the spot and contended that execution of the decree as such is illegal and unsustainable. The court below repelled all the above contentions on the ground that the decree, as it stands, has to be executed.

3. It is contended by the learned counsel for the petitioner/judgment debtor that certain extent of the total land available was taken for widening the road and it is, therefore, that the extent has been reduced as found on re-survey. It is worthy to note that no such contention has been raised in

Exhibit P5 objection filed by the petitioner/ judgment debtor before the execution court. The petitioner/judgment debtor has no case that there was any acquisition or that there was any surrender of land for widening of the road. Without either acquisition or surrender by the person in possession, there cannot be taking possession of any extent of land by the Panchayat for widening of the road, as contended by the counsel for the petitioner. If at all there was any such highhanded action of trespass and encroachment into any portion of the property from the part of the Panchayat, it was upto the petitioner/judgment debtor to report that matter to the court. Not only that he has not reported, but, he has not even raised such a contention in Exhibit P5 objection. There is, therefore, absolutely no merit in the contention that is now advanced before me by the counsel for the petitioner.

4. It is seen from Exhibits P2 judgment and P2 (a) decree in O.S.No.1331/84 that title of the decree holder over plaint 'A' schedule property is declared; that the plaintiff was allowed to recover possession of the encroached portion of plaint 'A' schedule property from the possession of the defendant, after demolishing the structure constructed by him encroaching into plaint 'A' schedule property and declaring that the respondent/decree holder/plaintiff is entitled to put up boundary along the B-H line at the expense of both the petitioner and the respondent. The petitioner is also permanently restrained from trespassing into plaint 'A' schedule property. Exhibit P1 plan has depicted the B-H line, which is the common boundary separating 'A' and 'B' schedule properties and it is on that B-H line that boundary is allowed to put up, demolishing the structure constructed by the petitioner, encroaching into plaint 'A schedule property. After the decree is

passed in so very specific terms, the petitioner/ judgment debtor cannot raise all the contentions afresh on the execution side, so as to delay the execution of the decree, that has become final.

This writ petition, impugning Exhibit P8 order, in the circumstances, is devoid of merit and is dismissed.

30th March, 2007 (K.P.Balachandran, Judge)

tkv